

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MIGUEL A. ADAMS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-07-1300-D
)	
D.O. COREY GREEN, <i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

The undersigned recommends dismissal of the action without prejudice to refile.


The Court granted pauper status on November 20, 2007, and ordered an initial payment of \$12.52 by December 10, 2007. Order Granting Leave to Proceed *in Forma Pauperis* at p. 1 (Nov. 20, 2007); *see* Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(1)(A)-(B). This Court warned Mr. Adams “that unless by [December 10, 2007] he has either (1) paid the initial partial filing fee, or (2) shown cause in writing for the failure to pay, this action will be subject to dismissal without prejudice to refile.” Order Granting Leave to Proceed *in Forma Pauperis* (Nov. 20, 2007). On December 12, 2007, the Court *sua sponte* extended the deadline for payment of the initial partial filing fee to December 27, 2007. Order (Dec. 12, 2007). The Court again warned Mr. Adams that the failure to timely comply could result in dismissal of the action without further notice. *Id.* Nonetheless, the Plaintiff has still not made the \$12.52 payment or demonstrated good cause for his failure to pay.

The record does not reflect any excuse for Mr. Adams' failure to pay the initial installment on the filing fee. He apparently has the resources to pay the initial installment of \$12.52. When Mr. Adams initiated the action, he had \$27.05 in his institutional account,¹ and he has not made any payments in the 48 days that have passed since the award of pauper status. In these circumstances, the Court should dismiss the action without prejudice to the filing of a new suit. *See Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of a federal inmate's civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

The Plaintiff is advised of his right to object to this report and recommendation by January 28, 2008. *See* W.D. Okla. LCvR 72.1. If the Plaintiff does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Plaintiff is further advised that if he does not timely object, he would waive his right to review by the Tenth Circuit Court of Appeals. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral is terminated.

Entered this 7th day of January, 2008.


Robert E. Bacharach
United States Magistrate Judge

¹ *See* Motion for Leave to Proceed *in Forma Pauperis* and Supporting Affidavit at p. 3 & Attachment at p. 1 (Nov. 15, 2007).